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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,199

07/14/2006

Karsten Buse

20811/0204481-US0

7625

7278

7590

06/09/2009

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EXAMINER

HITESHEW, FELISA CARLA

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,199	Applicant(s) BUSE ET AL.	
	Examiner Felisa C. Hiteshew	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-21 is/are allowed.
- 6) ☒ Claim(s) 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's argument, see the remarks, filed 3/9/2009, with respect to claim 12 has been fully considered and are persuasive. The rejection under 35 USC 112, 2nd paragraph of 12/09/2008 has been withdrawn.
2. Applicant's arguments, see the remarks, filed 3/9/2009, with respect to claims 12-21 have been fully considered and are persuasive. The rejection under 35 USC 103(a) of 12/09/2008 has been withdrawn.
3. Applicant's argument with respect to claim 22 has been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

1. Claim 22 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dhar (Optical properties of reduced lithium niobate single crystals - Journal of Applied Physics 68(1990) December, No. 11).

Dhar teaches a method for the optical transmission of LiNbO₃ single crystals measured in the wavelength range of 200-900 nm, for different degrees of reduction...near the fundamental absorption edge. The samples were annealed at 1000°C in oxygen which yielded colorless crystals. Samples with different degrees of reduction were obtained by heating these unreduced samples in vacuum of 10 Torr at different temperatures in the range of 600 to 1100°C. (See entire reference).

As stated in MPEP 2113 [R-1] "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the

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product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). Once a product appearing to be substantially identical is found and a 35 U.S.C. 102/103 rejection is made, the burden shifts to the applicant to show an unobvious difference "The Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature" than when a product is claimed in the conventional fashion. In re Fessmann, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). Accordingly since the resulting product appears to be the same the instant claims are anticipated by and/or rendered obvious by the references.

Allowable Subject Matter

2. Claims 12-21 are allowed.
3. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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4. The following is a statement of reasons for the indication of allowable subject matter: The most relevant prior art of reference is that of Dhar (Optical properties of reduced lithium niobate single crystals - Journal of Applied Physics 68(1990) December, No. 11. However, it does not teach nor fairly suggest singularly or in any combination thereof a method for treating a crystal having nonlinear optical properties and including foreign atoms which bring about specific absorption of incoming light, comprising: converting the foreign atoms in the crystal to a lower valency state by an oxidation process, thereby liberating electrons; removing, during the oxidation process, the liberated electrons from the crystal using an external current source so as to reduce an optical absorption value of the crystal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Felisa Hiteshew whose telephone number is (571) 272-1463. The examiner can normally be reached on Mondays through Thursday from 5:30 AM to 4:00 PM with Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mikhail Kornakov, can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-1463.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Private PAIR only. For more information about the PAIR system. see

<http://pair-direct.uspto.gov>. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866- 217-9197

(toll-free).

/Felisa C. Hiteshew/

Primary Examiner, Art Unit 1792

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